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FEDERAL TRADE COMMISSION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

NEOVI, INC., d/b/a NEOVI DATA
CORPORATION and QCHEX.COM, et al.,

Defendants.

CASE NO. 06 CV 1952 JLS (JMA)

**FEDERAL TRADE COMMISSION'S
SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF ITS CONTEMPT
MOTION AGAINST THOMAS
VILLWOCK, JAMES M. DANFORTH,
G7 PRODUCTIVITY SYSTEMS, INC.,
IPROLOG CORPORATION, AND
FREEQUICK WIRE CORPORATION**

Hearing Date: July 15, 2010

Time: 1:30pm

Courtroom 6

Judge: Hon. Janis L. Sammartino

1 **I. INTRODUCTION**

2 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), submits this
3 Supplemental Memorandum in support of its motion for the Court to hold Thomas Villwock,
4 James M. Danforth, G7 Productivity Systems (“G7”), iProlog Corporation (“iProlog”), and
5 FreeQuick Wire Corporation (collectively “Contempt Defendants”) in contempt. In its initial
6 Motion for Order to Show Cause Why Contempt Defendants Should Not Be Held in Contempt
7 (“Contempt Motion”), the FTC demonstrated that Contempt Defendants have been violating
8 the Final Order for Permanent Injunction and Other Equitable Relief (“Final Order”) entered
9 on January 7, 2009 through their operation of www.FreeQuickWire.com (“FQW”).
10 Specifically, the FTC showed that Contempt Defendants are creating and delivering checks
11 through FQW without implementing *any* of the required account control and identity
12 verification procedures, thereby leaving unsuspecting consumers’ financial accounts
13 vulnerable and “ringing the dinner bell for fraudsters.”

14 Evidence acquired since filing the Contempt Motion, including Contempt Defendants’
15 own testimony,¹ demonstrates clearly and convincingly that Contempt Defendants are blatantly
16 violating the Final Order not only through their operation of FQW but also through two
17 additional products: VersaCheck® 2010 software and newly-released Qchex check creation
18 templates. VersaCheck® 2010 software, released four months after entry of the Final Order,
19 enables users to “create” checks from their home computers without any of the required
20 verification procedures. Contempt Defendants also have integrated FQW into the
21 VersaCheck® software to allow customers to “deliver” VersaCheck®-created checks over the
22 Internet, again without any of the Court-ordered safeguards. Even more astounding, in June

23
24 ¹ In addition to this evidence, since filing the Contempt Motion and pursuant to Section
25 IV of the Final Order, the FTC demanded written reports and the production of documents from
26 Contempt Defendants. To date, Contempt Defendants have not provided full responses to these
27 demands and are, thus, in contempt of the Compliance Monitoring provisions of the Final Order.
28 The FTC also subpoenaed documents and information from FreeQuick Wire Corp. and its
 nominal owner and Director, Diana Villwock. To date, neither Diana Villwock nor FreeQuick
 Wire Corp. has responded to the subpoena. The FTC seeks to preclude Contempt Defendants
 from presenting any evidence related to these questions or demands.

2010, Contempt Defendants launched more violative products – check creation templates – through Qchex.com that also allow users to create checks to print or deliver via email without any account or identity verification protocols as required by the Final Order.

As stated in the Contempt Motion, Contempt Defendants’ utter disregard of the Final Order warrants both coercive and compensatory sanctions. Contempt Defendants’ complete disregard for the court’s Final Order warrants imprisonment, or at the very least a per diem fine of \$10,000, to coerce them to comply. Moreover, in addition to the compensatory remedy requested in the Contempt Motion (Contempt Defendants’ revenues obtained from the operation of FQW), monetary relief also should include all revenues generated from sales of VersaCheck® 2010 software as well as sales of paper, ink, and Validation Codes associated with the use of VersaCheck® software and the new Qchex.com templates.² Anything less would allow Contempt Defendants to benefit from their contempt.³

II. ADDITIONAL EVIDENCE DEMONSTRATES CLEARLY AND CONVINCINGLY THAT CONTEMPT DEFENDANTS ARE CREATING AND DELIVERING CHECKS IN VIOLATION OF THE FINAL ORDER.

A. Contempt Defendants Have Confirmed Their Control and Participation in Creating and Delivering Checks Using FQW.

During depositions taken in January 2010, Contempt Defendants Villwock and Danforth confirmed their control of Contempt Defendants G7 and iProlog, as well as Contempt

² The FTC recently made a demand for an accounting of these revenues pursuant to the Final Order’s Compliance Monitoring requirements in Section IV, however, the due date for responding to the demand has not yet passed. Assuming the FTC receives a full accounting of these figures, it will then provide the Court with a recommendation of an appropriate disgorgement amount.

³ As noted in the Contempt Motion, Contempt Defendants’ contumacious conduct constitutes changed circumstances that justify the entry of a modified order pursuant to Federal Rule of Civil Procedure 60(b). Specifically, in order to achieve the Final Order’s purpose of protecting consumers, the Defendants should be banned from creating or delivering checks for a customer or assisting others in creating or delivering checks. The Ninth Circuit has now affirmed this Court’s Final Order, however, this Court will not regain jurisdiction to modify the Final Order until the Ninth Circuit issues its mandate, which may be further delayed because this week, the Defendants filed for a rehearing *en banc*. Once the mandate issues, the FTC will renew its motion to Modify the Final Order.

1 Defendants' active role in the development and operation of FQW. Specifically, Contempt
 2 Defendants admit that they direct and control both G7 and iProlog, and that they use iProlog
 3 employees to create, operate, and maintain G7's software programs.⁴ (PX 65, Danforth for
 4 iProlog Dep. at 7-9, 31-35, 40-50, 64, 67-68, 90, 92; PX 61, Villwock Dep. at 22-23, 27, 39-40,
 5 71, 113, 158, 173, 208; PX 63, Danforth for G7 Dep. at 24, 26, 39, 41-45, 49, 51, 59, 61-66,
 6 71-72, 80-81; PX 64, Villwock for G7 Dep. at 242-244; PX 66, Villwock for iProlog Dep. at 6-
 7 8, 13-21).

8 Contempt Defendants further admit that iProlog employees developed FQW using
 9 iProlog resources (PX 61, Villwock Dep. at 75, 90-91 (stating that "no one" other than
 10 Villwock, iProlog trainee Diana Villwock, and iProlog software programmer Steffen Reichert
 11 was on the "team" that developed FQW), 92-93, 97-99, 158; PX 65, Danforth for iProlog Dep.
 12 at 78-81 (testifying that iProlog employees developed graphics for FQW and that no systems
 13 other than those of G7 and iProlog were used in developing FQW), 81-82; PX 66, Villwock for
 14 iProlog Dep. at 27-28; PX 67, D. Villwock Dep. at 25-27, 36, 55-59, 61, 74-75) that they and
 15 their iProlog employees suggested and created content for FQW (PX 61, Villwock Dep. at 78,
 16 104 (testifying that he "author[ed] some of this [content of FQW] or assist[ed] in it"), 116-117
 17 (testifying that a "team" of Villwock, Danforth, and Diana Villwock authored the "Need
 18

19 ⁴ Similar to Neovi's relationship with G7, iProlog (Neovi's successor) operates as a
 20 common enterprise with G7, including through common control, commingling of funds and
 21 operations between the corporations; the routine performance of work by an employee of one
 22 corporation for the other corporation; and the integration of technology between the
 23 corporations, including software. (PX 61, Villwock Dep. at 90-91, 158; PX 63, Danforth for G7
 24 Dep. at 41-51, 59-66, 71-72, 80-81, 123-24; PX 65, Danforth for iProlog Dep. at 9, 11-12, 16,
 25 27, 31-50, 67-68, 90, 110-111; PX 66, Villwock for iProlog Dep. at 12-21). *See SEC v. Elliott*,
 26 953 F.2d 1560, 1565 n.1 (11th Cir.1992) (commingling of corporate funds and failure to
 27 maintain separate of companies); *Sunshine Art Studios, Inc. v. FTC*, 481 F.2d 1171, 1175 (1st
 28 Cir.1973) (common control); *Waltham Precision Instrument Co. v. FTC*, 327 F.2d 427, 431 (7th
 Cir. 1964) (common control); *Delaware Watch Co. v. FTC*, 332 F.2d 745, 746 (2d Cir.1964)
 (business transacted through a maze of interrelated companies); *FTC v. JK Publ'ns, Inc.*, 99 F.
 Supp.2d 1176, 1201-02 (C.D. Cal. 2000) (common control, sharing of employees, and
 conducting business through a maze of interrelated companies); *FTC v. Jordan Ashley*, 1994-1
 Trade Cases (CCH) ¶ 70,570 at 72,094, 72,095 (S.D. Fla. 1994) (no real distinction existed
 between the Corporate Defendants).

Validation?” webpage on FQW), 158; PX 65, Danforth for iProlog Dep. at 78-80); and that they edited and reviewed that content (PX 61, Villwock Dep. at 78, 101-102). They also admit that pages found on FQW are substantially identical to those previously used on Qchex.com. (PX 61, Villwock Dep. at 116-117 (confirming that the “Need Validation?” webpage is on both FQW and Qchex.com), 124-125; PX 64, Danforth for G7 Dep. at 177-78; *compare* PX2, L. Lewis Dec., Att. A, Pages 2-3, 12 *with id.*, Att. C, Pages 2-5, 14).⁵

Contempt Defendants also admit that FQW allows users to create and deliver checks, (PX 61, Villwock Dep. at 89 (testifying that FQW “invites someone who is interested to send a check”); PX 56, Danforth for iProlog Dep. at 49-56 (testifying that he used FQW in January 2010 to “see if [he] could produce a check” and successfully printed a FQW check at his desktop after he “delivered” the check “data” to his email account as the recipient); PX 67, D. Villwock Dep. at 43-45), and that the operation of FQW relies on and uses the products of Contempt Defendants G7 and iProlog. For example, FQW incorporates iProlog software, including a Messenger program, an Account Product License Manager program, and TrueSign digital signing technology, all of which are necessary to the operation of FQW. (PX 61, Villwock Dep. at 106-113, 133-134; PX 65, Danforth for iProlog Dep. at 52-55, 57-58, 63, 70, 83-84, 86; PX 66, Villwock for iProlog Dep. at 14-28; PX 67, D. Villwock Dep. at 38, 54-59, 66, 69-71). Contempt Defendants further admit that, at least until January 2010, FQW: explicitly required the use of G7 VersaCheck blank check paper and VersaInk or VersaToner to print checks sent via the website (PX 67, D. Villwock Dep. at 49-52, 64); required check

⁵ In the face of this overwhelming evidence of their direct participation in check creation and delivery through FQW, Contempt Defendants concocted an unsubstantiated story that Villwock’s college-aged daughter, Diana, created and controlled FQW (with substantial help from Villwock, Danforth, and several iProlog employees) while working as a “trainee” at iProlog. In Fall 2008, Diana purportedly sold FQW to MIPS Dateline Technologies GmbH (“MIPS”), a German company owned by Villwock’s brother with whom the Contempt Defendants have a long-term relationship (PX 62, Danforth Dep. at 21; PX 63, Danforth for G7 at 17-18). Despite being served with written requests and subpoenas demanding the production of any agreements, sale papers, or any other documents related to a purported sale, to date, neither Diana Villwock nor any Contempt Defendant has produced any such documents. (PX 67, D. Villwock Dep. at 96-99; PX 60, R. Lewis Supp. ¶¶ 117-118; *id.*, Att. V, W, CC).

1 recipients to input Validation Codes created and sold by G7 prior to allowing them to print
2 checks received via FQW (PX 61, Villwock Dep. at 128-131, 192; PX 66, Villwock for iProlog
3 Dep. at 22-23; PX 67, D. Villwock Dep. at 54-55, 63-64); and relied on contacting a database
4 created and maintained by G7 and iProlog in order to determine whether the entered Codes
5 were valid. (PX 66, Villwock for iProlog Dep. at 21-26; PX 67, D. Villwock Dep. at 68-69).
6 Contempt Defendants also admit that, at least until January 2010, G7 advertised FQW on its
7 website and provided hyperlinks to FQW from its website (PX 61, Villwock Dep. at 183-188;
8 PX 63, Danforth for G7 Dep. at 105-112), while FQW advertised G7 products on its website
9 and provided hyperlinks to G7 from its website.⁶ (PX 61, Villwock Dep. at 197; PX 67, D.
10 Villwock Dep. at 52-53, 59-61, 67).

11 Perhaps most importantly, Contempt Defendants admit that FQW does not verify users'
12 identities or account authorizations prior to allowing users to create and deliver checks and that
13 Contempt Defendants have taken no steps to put into place any of the required security
14 protocols on FQW. (PX 61, Villwock Dep. at 118-19 (confirming that "the team, Diana,
15 myself and Jim" discussed and dismissed the idea of including identity and account
16 verifications on FQW); 192-193; PX 65, Danforth for iProlog Dep. at 86-87; PX 67, D.
17 Villwock Dep. at 45-46 (confirming that FQW did not "do anything to verify that the person
18 inputting . . . financial account information [into FQW], had authority over that financial
19 account;" did not "do anything [aside from validating access to email address] to verify that
20 the person inputting the information, including the name of the payer, was who he said he
21 was;" did not "hire anyone to do any type of verification on their behalf;" and did not "do any
22

23 ⁶ Contempt Defendants claim that in January 2010, they made changes to FQW and to
24 G7's website, www.g7ps.com. Despite any superficial changes, G7 continues to advertise and
25 promote FQW in its products (PX 60, R. Lewis Supp., Att. E, Page 6), and FQW still calls for
26 check recipients to purchase G7 products in order to print checks and directs FQW check
27 recipients to G7's website (PX 60, R. Lewis Supp. ¶¶ 8-13, 19-22, 24, 27, 29-36; *id.*, Att. A, Att.
28 B., Pages 20-26, 28-29, Att. C, Pages 16-18, 24-57). In addition, FQW continues to advertise
G7 products at the bottom of each printed check page. (PX 60, R. Lewis Supp., Att. C, Pages 24,
58). Moreover, as discussed above, FQW continues to rely on iProlog and G7 products and
software for its operations.

1 type of micro-deposits into any users' accounts"); *id.* at 87-88). They also admit that they have
 2 taken absolutely no steps to attempt to institute such verifications at G7 or iProlog. (PX
 3 61, Villwock Dep. at 170-171 (testifying that G7's only compliance efforts have been to
 4 respond to the "six months review" and to determine "whether there were any services G7
 5 offered after the order that relate to check creation and delivery of checks to be drawn on other
 6 people's bank account, and the answer to that is no" (*sic*)); PX 62, Danforth Dep. at 43-44; PX
 7 65, Danforth for iProlog Dep. at 77-78).

8 These admissions, along with the evidence previously submitted by the FTC in support
 9 of its Contempt Motion, clearly and convincingly show that Contempt Defendants, under the
 10 direction of Villwock and Danforth, are violating the Final Order through FQW. FQW allows
 11 users to create checks, to deliver those checks electronically, and to print those checks. FQW
 12 relies on and incorporates software owned by and licensed from Contempt Defendant iProlog,
 13 as well as products sold by and a database maintained by Contempt Defendant G7. G7
 14 continues to advertise and promote the use of FQW, and FQW continues to tell its users that
 15 G7 Validation Codes, G7 blank check paper, and G7 ink are required to be able to print FQW
 16 checks. (PX 60, R. Lewis Supp. ¶¶ 19-22, 24, 27, 29-36; *id.*, Att. B, Pages 20-26, 28-29, Att.
 17 C, Pages 16-18, 24-57, Att. E, Page 6).

18 Incredibly, Contempt Defendants' violative practices committed through FQW have
 19 continued at least through May 2010. Indeed, the FTC again created and delivered a FQW
 20 check – drawn on the same bank account used in the undercover check transactions described
 21 in the Contempt Motion – without encountering any attempts to verify identity or account
 22 authorization as required by the Final Order. (PX 60, R. Lewis Supp. ¶¶ 14-18, 23-37, 114).

23 **B. Contempt Defendants Also Create and Deliver Checks Through G7's**
 24 **VersaCheck® Software Without Verifying Identity or Account**
Authorization.

25 Beyond confirming Contempt Defendants' roles in creating and delivering checks
 26 using FQW, however, the FTC has discovered that, since entry of the Final Order, Contempt
 27 Defendants have launched new products that offer users even more opportunities to "create"
 28

1 and “deliver” checks without validating their identities or authorization to use financial
 2 accounts. Specifically, without any of the security protocols required by the Final Order,
 3 Contempt Defendants’ VersaCheck® software: 1) creates checks through its stand-alone
 4 check creation software; and 2) delivers checks using FQW, which is integrated into the
 5 VersaCheck® software.⁷

6 **1. VersaCheck® Software Creates Checks for Customers Without**
 7 **Confirming Their Identity or Account Authorization.**

8 Along with its blank check paper and ink products, G7 sells a line of software called
 9 VersaCheck®, which it describes as “check creation software.” (PX 60, R. Lewis Supp., Att.
 10 D, Pages 1-3). Specifically, VersaCheck® software enables purchasers to download a program
 11 to their computers to “create & print” personal-sized, business-sized, and custom checks. (PX
 12 60, R. Lewis Supp., Att. D, Pages 2-3). The most recent version of VersaCheck® software,
 13 VersaCheck® 2010, was released four months after entry of the Final Order.⁸ (PX 60, R.
 14 Lewis Supp., Att. D, Pages 29-31). But, despite the clear mandate of the Final Order,
 15 Contempt Defendants have taken absolutely no steps to validate the identity or account
 16 authorization of VersaCheck® 2010 users before being “involve[d] in the creating, designing,
 17 composing, drawing, or writing on paper or electronic media a check drawn on a specific
 18 financial institution.” (Final Order at 3, definition of “creating a check”).

19 First, there is no doubt that VersaCheck® software creates checks. Contempt
 20 Defendants admit that VersaCheck® software “lets people create and print their own checks.”

21 ⁷ Each Contempt Defendant is in active concert and participation with the other Contempt
 22 Defendants in creating and delivering checks using VersaCheck®. G7 sells VersaCheck®
 23 software as a G7 product. iProlog employees created VersaCheck® software and continue to
 24 provide software and customer service consulting services to G7 with regard to VersaCheck®.
 25 (PX 61, Villwock Dep. at 173). Danforth and Villwock control and direct the operations of G7
 and iProlog, including all aspects of the VersaCheck® software and its use of FQW. (*See supra*
 p. 2-3).

26 ⁸ While G7 has offered VersaCheck® software for a number of years, the most recent
 27 version of the software, prior to the April 2009 launch of VersaCheck® 2010, was the
 28 VersaCheck® 2008 version released in June 2007. (PX 60, R. Lewis Supp., Att. D, Pages 26-
 28).

(PX 64, Danforth for G7 at 154; *see also* PX 61, Villwock Dep. at 172, 179-180 (confirming that VersaCheck® enables purchasers to create checks); PX 63, Danforth for G7 Dep. at 14; PX 65, Danforth for iProlog Dep. at 90-91). Contempt Defendants also highlight the fact that VersaCheck® is check creation software in advertisements, product packaging, and user guides for the product. (PX 60, R. Lewis Supp., Att E, Page 1 (describing VersaCheck® as the “#1 Finance & Check Creation Software”); *id.*, Att. E, Page 2 (highlighting the ability of different versions of VersaCheck® to enable purchasers to “create” personal and business checks); *id.*, Att. M, Pages 5-7 (User Guide explaining that “[t]here are several ways to create checks using your VersaCheck software” and that the “Write Checks” screen “allows you to write checks drawn off of any bank or money market account that you setup with an electronic checkbook in VersaCheck”)).

Second, there also can be no doubt that Contempt Defendants’ VersaCheck® 2010 software violates the Final Order. Testifying on behalf of G7, Danforth confirms that VersaCheck® software does not “include any protocols or programs that validate purchasers’ identities or account authorization before those users are allowed to use the software to create checks.” (PX 64, Danforth for G7 Dep. at 158; *see also* PX 64, Villwock for G7 Dep. at 249 (confirming that there are no programs within VersaCheck® software that “require users to authenticate that they have authority over the banking accounts that they’re going to use when creating checks using that software”); PX 61 Villwock Dep. at 173).

As further confirmation of these violations, an FTC investigator purchased and used the VersaCheck® Gold 2010 software to create two checks. The investigator used the same undercover identities and bank account information used in the transactions described in the FTC’s Contempt Motion. (PX 60, R. Lewis Supp. ¶¶ 53-58, 75-82; *id.*, Att. K, Pages 1-33, 51, Att. L, Pages 1-29, 34). Using VersaCheck®, the investigator was able to select a design for the checks, including an option to insert a bank logo on the check image, and to fill in the payor, payee, bank account, and amount information. (PX 60, R. Lewis Supp. ¶¶ 53-57, 76-79; *id.*, Att. K, Pages 8-26, Att. L, Pages 9-12). As with FQW, the investigator was able to use

1 iProlog's TrueSign program to create a digital signature for the checks. (PX 60, R. Lewis
2 Supp. ¶¶ 80-81; *id.*, Att. L, Pages 17-22). The printed checks appear virtually identical to
3 those created using FQW. (PX 60, R. Lewis Supp., Att. C, Pages 24, 58, Att. K, Page 51, Att.
4 L, Pages 34, 47). Neither before, during, nor after the investigator created the checks using
5 VersaCheck® did anyone acting on behalf of the Contempt Defendants contact the investigator
6 to confirm his undercover identity or his authority to draft checks on the specified financial
7 account (authority which he did not have, as the investigator intentionally used a second
8 identity's financial information). (PX 60, R. Lewis Supp. ¶114).

9 Thus, since at least April 2009, Contempt Defendants have sold VersaCheck® "check
10 creation software" that enables purchasers to create checks on their home computers, without
11 implementing *any* of the identity or account verification procedures required by the Final
12 Order.

13 **2. VersaCheck® Software Uses FQW to Deliver Checks for Customers**
14 **Without Confirming Their Identity or Account Authorization.**

15 Contempt Defendants are also "delivering" checks in violation of the Final Order
16 through VersaCheck® by "e-mailing, sending, or transmitting . . . a check drawn on a specific
17 financial institution." (Final Order at 3, definition of "delivering a check"). Indeed, Contempt
18 Defendants' advertising, product packaging, and online information explicitly highlight the
19 fact that in addition to "creating" checks, VersaCheck® 2010 software delivers checks via the
20 Internet through the integration of FQW. (PX 60, R. Lewis Supp., Att. E (highlighting
21 features of VersaCheck® Gold 2010, including "Send & Receive E-mail Checks" and "NEW!
22 ProVision – Online check delivery and approval service to send, approve, receive & print
23 checks – anytime, anywhere!"); *id.* ¶¶ 95-99; *id.*, Att. M, Pages 11-25 (VersaCheck® 2010
24 Online Guide confirming that email functions use FQW and that recipients of VersaCheck®
25 checks need to download the FQW Messenger program in order to retrieve checks); *see also*
26 *id.*, Att. E, Pages 8-9).

27 Moreover, an FTC investigator confirmed that the VersaCheck® software integrates
28 FQW. Specifically, VersaCheck® uses the FQW icon (a yellow and blue circle) for its "Send

Checks” button (PX 60, R. Lewis Supp. ¶¶51; *id.* Att. K, Page 1); the investigator received emails from FQW alerting him to the fact that his checks were sent using FQW (*id.* ¶¶ 70-71, 90; *id.*, Att. K, Pages 66-71, Att. L, Pages 55-58); and when the investigator clicked the “Receive E-Mail Checks” button in VersaCheck® (also identified with the FQW icon), the software program required him to “sign up” for FQW (and opened a window to FQW to create a FQW account) before it would retrieve email checks (*id.* ¶¶ 67-68; *id.* Att. K, Pages 58-61).

Not surprisingly, Contempt Defendants make no effort to confirm identity or account authorization before allowing users to deliver VersaCheck®-created checks through FQW. Indeed, the investigator’s checks were delivered via FQW to the undercover email account within moments of clicking the “Send” button in VersaCheck®. (PX 60, R. Lewis Supp. ¶¶ 59-60, 70-71, 90; *id.*, Att. K, Pages 37-39, 69-71, Att. L, Pages 55-58).

C. Contempt Defendants Recently Launched a New Version of Qchex.com to Create and Deliver Checks With No Apparent Effort to Validate Identity or Account Authorization.

Incredibly, on June 21, 2010, Contempt Defendants announced the launch of yet another check creation product using the renewed Qchex.com website and confirmed that they will, again, make no effort to validate the identity or account authorization of customers. (PX 60, R. Lewis Supp., Att. Q, Pages 1-6, Att. R, Pages 5-6). Until recently, the Qchex.com website informed visitors that the website had “discontinued its service to restructure and improve key service levels.” (PX 2, L. Lewis Att. C, Page 1). As a result, visitors to Qchex.com could not create or deliver checks using the website. On June, 21, 2010, however, the website’s homepage proudly announced that visitors can “Create, Send and Receive Your Checks for FREE!” using check templates downloaded from Qchex.com that work with either Adobe Acrobat or Microsoft Word. (PX 60, R. Lewis Supp., Att. R, Page 1). As described in the press release issued by iProlog, Qchex.com’s check templates “allow millions of consumers and businesses nationwide a quick and convenient means to *create*, print and/or *deliver* checks via email.” (*Id.*, Att. R, Page 5) (emphasis added). In fact, according to iProlog, “these new check templates demonstrate the ease with which checks can be created and delivered electronically by a large segment of the population without having to pay any

1 fees for the service.” (*Id.*, Att. R, Page 6). Consistent with their other business operations,
 2 however, while downloading the templates may be free, Contempt Defendants encourage users
 3 to purchase and use G7 paper and ink products in printing the checks. (PX 60, R. Lewis Supp.
 4 ¶ 112; *id.* Att. S, Page 14).

5 Significantly, Contempt Defendants admit that they have not employed the Court’s
 6 required identity and account authorization verifications in connection with downloading these
 7 new Qchex.com templates. As iProlog explains in its press release, the Qchex.com templates
 8 “allow users to enter check book information for an *unlimited* number of bank accounts with
 9 ultimate privacy and *without any need to disclose sensitive financial and personal information*
 10 *to third parties – a popular and risky data gathering practice applied by electronic fund*
 11 *transfer providers that exposes consumers to becoming ID theft victims.*” (PX 60, R. Lewis
 12 Supp. Att. R, Page 5) (emphasis added). Contempt Defendant Villwock expresses no concern
 13 for this complete disregard for the court’s Final Order:

14 I would like to briefly comment on ‘safety.’ The free and unrestricted access to easy to
 15 use check templates makes clear to the public, that anyone can create and send checks
 16 without verification and therefore it cannot be assumed that all checks are valid.
 17 Checks are only as trustworthy as the parties involved in the transaction. Fraudulent
 18 creation of a printed check CANNOT be prevented because technology available to
 everyone has made check creation a trivial task . . . We, as technicians, only provide
 the tools necessary for the public to enhance user experience and help ensure checks
 meet layout and scanning standards necessary for flawless processing through the
 automated check clearing system.

19 (PX 60, R. Lewis Supp., Att. R, Pages 5-6).

20 By releasing this check creation product less than one month before their scheduled
 21 contempt hearing, Contempt Defendants make clear that they have no intention of complying
 22 the Final Order.⁹

23
 24 ⁹ On June 29, 2010, after the FTC raised its concerns regarding the new Qchex.com
 25 templates with defense counsel, Contempt Defendants temporarily blocked users from
 26 downloading the templates. In an “Important Message” posted to the Qchex.com homepage,
 27 Contempt Defendants state: “Download and use of check form templates from the internet may
 28 require authentication of bank account information and identity of its users. Pending court
 approval, FREE ‘Downloads’ of check templates are currently unavailable from this site.” (PX
 60, R. Lewis Supp., Att. R, Page 1). This temporary block, however, does not change the fact
 that Contempt Defendants provided the free downloads for more than a week and widely
 disseminated the press release announcing their availability. (PX 60, R. Lewis Supp. ¶ 105, Att.

1 **III. CONTEMPT DEFENDANTS SHOULD INCUR SANCTIONS.**

2 In light of Contempt Defendants' blatant disregard for the Final Order, as well as the
3 harm they continue to cause consumers by offering their products and services without
4 implementing the required security account and identity verification procedures, both coercive
5 and compensatory sanctions are warranted.

6 **A. Coercive Sanctions**

7 Not only have Contempt Defendants failed to take a single step to implement the
8 required security protocols on FQW, but they have expanded their check creation and delivery
9 services through their VersaCheck® software, which integrates and relies on FQW, and
10 through their newly released Qchex.com templates. Moreover, Contempt Defendants
11 concocted a story to create the illusion of severed ties with FQW, but the evidence is
12 overwhelming that they jointly operate FQW, profiting from the sale of paper, ink products,
13 and Validation Codes to users of FQW, VersaCheck®, and, now, Qchex.com. In sum,
14 Contempt Defendants have demonstrated complete disregard for this Court's Final Order –
15 continuing a business model that freely allows fraudsters to create and deliver checks with no
16 attempt to confirm their identities or account authorization, regardless of what harm may be
17 caused by their actions.

18 Contempt Defendants' continuing and utter disregard for this Court's Final Order
19 warrants incarceration to coerce them to cease creating and delivering checks without the
20 required identity and account verification protocols. At the very least, the FTC seeks a daily
21 per diem fine that is large enough to exert substantial coercive pressure, such as \$10,000 per
22 day, until Contempt Defendants comply with the Final Order.

23 **B. Compensatory Sanctions**

24 In addition to the monetary relief requested in the FTC's Contempt Motion (Contempt
25 Defendants' total revenue from creating and delivering checks through FQW), Contempt

26 _____
27 Q, Pages 7-10). Moreover, temporarily blocking the download will not prevent users who
28 already downloaded the templates from creating checks without any identity or account
 verifications.

Defendants should also disgorge all revenues since entry of the Final Order from the sale of VersaCheck® 2010 software, from sales of paper, ink, and validation codes used on VersaCheck® software to create or deliver checks since entry of the Final Order,¹⁰ and from recent distribution of Qchex templates. Because iProlog's Messenger program, used in both FQW and VersaCheck®, requires e-check recipients to enter Validation Codes from G7 products before they can print checks, Contempt Defendants should have records reflecting the type and quantity of G7 products actually purchased for use with FQW and VersaCheck®. Allowing Contempt Defendants to retain any of these revenues would unjustly reward them for their utter disregard of this Court's Final Order.

IV. CONCLUSION

Contempt Defendants flagrantly continue to violate the Final Order's core conduct prohibitions thus continuing to facilitate fraudsters' ability to use false identity information and to draw checks on unsuspecting consumers' accounts. They have thumbed their nose at the Court in blatant violation of the Final Order. For the foregoing reasons and those set forth in the FTC's Contempt Motion, the FTC requests that the Court enter a Contempt finding against Contempt Defendants and order the requested coercive and compensatory sanctions.

Date Submitted: July 2, 2010

Respectfully submitted,

/s/ Laura Schneider

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FEDERAL TRADE COMMISSION

¹⁰ Contempt Defendants' use of FQW to deliver VersaCheck®-created checks does not seem to be limited to VersaCheck® 2010 software. Indeed, it appears that users of VersaCheck® 2007 and 2008 software ultimately connect to FQW to deliver and receive checks via the Internet without any identity or account authorization verifications. (PX 60, R. Lewis Supp., Att. N, O; *see also* PX 64, Danforth for G7 Dep. at 191-92; PX 3, R. Lewis Att. K (previously submitted to the Court) (insert for VersaCheck® blank check paper refills advertising that VersaCheck® 2008 users may download software updates to "integrate powerful FreeQuickWire™ features with VersaCheck®").

Index of Exhibits

Exhibits to Supplemental Memorandum

PX 60	Supplemental Declaration of Ron Lewis.	4, 5 (n.6), 6, 7, 8, 9, 10, 11, 13 (n.10)
PX 61	Excerpt of Deposition of Thomas Villwock dated January 12, 2010	3, 4, 5, 6, 7 (n.7), 8
PX 62	Excerpt of Deposition of James Danforth dated January 15, 2010	4 (n.5), 6
PX 63	Excerpt of Deposition of James Danforth on behalf of G7 dated January 14, 2010	3, 4 (n.5), 8
PX 64	Excerpt of Deposition of James Danforth and Thomas Villwock on behalf of G7 dated January 15, 2010	3, 4, 8, 13 (n.10)
PX 65	Excerpt of Deposition of James Danforth on behalf of iProlog dated January 13, 2010	3, 4, 5, 6, 8
PX 66	Excerpt of Deposition of Thomas Villwock on behalf of iProlog dated January 14, 2010	3, 4, 5
PX 67	Excerpt of Deposition of Diana Villwock dated January 14, 2010	3, 4, 5

Deposition Exhibits

The following exhibits referenced in deposition excerpts PX 61-67 are attached:

PX 12-20, PX 23-55, PX 59